because the appeal, which is made to a court of law, does not rest on statutory or public duty, but merely on a private and individual bargain."

Here the right of the contractor, as in *Sharpington*, is correlated not with a statutory right or duty, which is the provision of education, but with the obligations entered into by the authority in their contract with him.

That the question whether in making a contract the authority were exercising powers or carrying out duties is irrelevant is seen from *Firestone Tire & Rubber Co. (S.S.) Ltd.* v. *Singapore Harbour Board.*[10] The board lost some tyres which had been entrusted to them for warehousing — a function they were entitled but not bound to perform by the Ordinance creating them. In the words of Lord Tucker, delivering the opinion of the Board at page 149, having chosen to act as warehousemen themselves rather than let the warehouses to others,

"they did not thereby cease to function as a harbour board and undertake some purely subsidiary activity of a non-public nature. They were supplying facilities essential to the shipping community in one of the ways authorised by the Ordinance."

In other words, to use Lord Shaw of Dunfermline's test, the rights of their customers were correlated with a statutory duty owed to them as members of the commercial community in whose interests the statutory functions were to be performed, and not merely with obligations in a contract entered into as an auxiliary to the carrying out of those functions, in which no one not a party to that contract could be concerned.

It has been more than once pointed out that it is difficult, if not impossible, to lay down any general principle determinative of these questions. Nevertheless, their Lordships are satisfied that the present case falls upon the same side of the line as did *Sharpington* v. *Fulham Guardians, supra,* and that the respondent's claim is not barred by the Public Authorities Protection Ordinance.

The only other question to which it is necessary to refer is the respondent's complaint that he has not been given an opportunity to prove the damages which he claims, stated at a sum of $6,500, arising out of the appellants' refusal to execute the contract referred to in Civil Suit, No. 222 of 1965. If such an opportunity were to be given, it would involve sending the case back for re-trial at first instance. Their Lordships are satisfied that it was in the exercise of a sound discretion that the Federal Court declined to take this step. The court evidently took the view that substantial justice was achieved by ignoring both the respondent's claim and the appellants' counterclaim, and giving the respondent generous treatment in the matter of costs, which would normally have been awarded against him as a consequence of his failure to take, at first instance, the point of law on which he was ultimately successful.

Their Lordships will accordingly advise the Head of Malaysia that the appeal should be dismissed and that the appellants should pay the costs of the appeal.

Appeal dismissed.

Solicitors: *Stephenson Harwood & Tatham; Graham Page & Co.*

SINGAPORE REPORTS

TEY LENG YEOW v. TAN POH HING & ANOR.

[O.C.J. (Winslow J.) January 24, 1973]

[Singapore — Divorce No. 146 of 1972]

Family Law — Divorce — Custody of child — Originally given to father in uncontested petition — Subsequent application by mother — Control and management of child given to mother.

In this case the petitioner had obtained a decree *nisi* for divorce in an uncontested petition. Custody of a child of the marriage, a boy of eight years, was given to the father. Subsequently the mother applied to be heard on the question of custody and the learned judge gave her leave to file an entry of appearance. On further consideration,

Held: although custody of the child had been given to the father, the control and management of the child would be given to the mother, with whom he had been all his life, as this would be in his best interests.

[Editorial Note: An appeal to the Court of Appeal (Civil Appeal No. 59 of 1972) against the split order in this case was dismissed by the Court (Wee Chong Jin C.J., Kulasekaram and Tan Ah Tah JJ.) on May 14, 1973 and the cross appeal was heard on May 15, 1973 but no order made.]

DIVORCE.

J. Tan Chor-Yong for the petitioner.

Joshua Lim (Deputy Director of Legal Aid) for the respondent.

Winslow J.: On 24th August, 1972 I ordered custody of the boy, aged 8, to the petitioner, his father, after granting the latter a decree nisi to be made absolute after 3 months on an uncontested petition. The boy was born after the respondent, the mother, had left the petitioner and has been brought up by his mother all along. The father saw him first in 1970 and had been ordered to pay maintenance in varying amounts since 1st July, 1970.

The boy was schooling at Sin Min School until his father removed him from that school after the decree nisi.

On 2nd October, 1972 I made an order for the father to send him back to that school as the boy's studies had been forcibly brought to an end. At the same time I gave leave to the respondent to file an entry of appearance to enable her to be heard on custody because she seemed to have misunderstood the position when she decided not to contest the divorce.

On 13th November 1972 I was informed that the father had, far from sending the boy back to Sin Min School, sent him to another school in defiance of my order.

The father did not impress me in the slightest as a person who could be trusted then to do what was best for the child and I regretted very much having made an order for custody in his favour in the first place which I would not have done had I been aware of the mother's views. I gave control and management of the child to the mother with whom he had been all his life as I considered that this would be in his best interests. I am aware that the mother is living with the co-respondent but she did not appear on the

ground alone to be less fit than the father to show him the love, care and control a child of that age, who has lived with her all his life in the absence of the father, needs. The father's attitude seemed to me to be prompted by a sense of proprietary rights over the son rather than by any bond of love or affection. I was certainly more impressed by the boy's need for his mother. He was anxious to see his mother whom he had never seen since the father took him over. In any case I have given only care and control to her.

Order accordingly.

Solicitors: *J. Tan Chor-Yong & Co.*

RE ISAAC PAUL RATNAM; LAW SOCIETY OF SINGAPORE v. ISAAC PAUL RATNAM

[O.C.J. (Wee Chong Jin C.J., Chua and Tan Ah Tah JJ.)

July 20, 1973]

[Singapore — Originating Summons No. 255 of 1973]

Advocates and Solicitors — Disciplinary proceedings — Striking off the roll — Conviction for criminal offence relating to dishonesty — Admission of another offence — Sentence of imprisonment and fine — Whether conviction implied a defect in character — Extreme penalty — Legal Profession Act (Cap. 217), s. 84(2)(a) & (b).

The respondent, an advocate and solicitor was on his plea of guilty convicted of an offence under section 108A of the Penal Code for instigating the general manager of Gemini Chit-Fund Corporation Limited, Malaysia Branch, to dishonestly remove property, to wit, five cars and other movable properties belonging to the said company. The respondent after his conviction for the said offence applied with the consent of the Deputy Public Prosecutor for another charge to be taken into consideration as provided in section 171(1) of the Criminal Procedure Code. That charge related to a offence punishable under section 201 of tht Penal Code.

The Magistrate's Court after hearing a plea in mitigation sentenced the respondent to one day's imprisonment and a fine of $4,000 or in default 15 months' imprisonment. As a consequence of his conviction, the respondent appeared before a Disciplinary Committee under the Legal Profession Act. The committee found that the respondent had been convicted of a criminal offence implying a defect of character which made him unfit for his profession within the meaning of section 84(2)(a) of the Legal Profession Act and that he was guilty of grossly improper conduct in the discharge of his professional duty within the meaning of section 84(2)(a) of the said Act. On reference of the matter by the Law Society to the High Court,

Held: the respondent was convicted of an offence which clearly implied a defect of character which made him unfit for the profession of an advocate and solicitor. Having considered all the circumstances including the respondent's admission of having committed another serious criminal offence, the court was of the view that the extreme penalty ought to be imposed and that the respondent should be struck off the roll and that he should bear all the costs of the Law Society.

ORIGINATING SUMMONS.

L. P. Thean for the applicants.

K. E. Hilborne for the respondent.

Wee Chong Jin C.J. (delivering the judgment of the court): The respondent, Isaac Paul Ratnam, an advocate and solicitor, who had been in private practice since March 1972 and prior thereto had been a State Counsel in the Attorney-General's Chambers for five years, was on his own plea of guilty convicted on 24th October 1972 in the First Magistrate's Court of the following charge, namely: —

"That he, Isaac Paul Ratnam, on or about the 3rd day of August, 1972, did instigate the General Manager, Gemini Chit-Fund Corporation Limited, Malaysia Branch, Kuala Lumpur, to dishonestly remove property, to wit, five cars and other movable properties, belonging to the said company, and he had by virtue of section 108A of the Penal Code committed an offence punishable under section 424 read with section 116 of the said Code".

The respondent immediately after his said conviction through his counsel applied with the consent of the Deputy Public Prosecutor for another charge to be taken into consideration by the court as provided for by section 171(1) of the Criminal Procedure Code. This charge reads as follows: —

"That he, Isaac Paul Ratnam, on or about the 2nd day of August, 1972, having reason to believe that a certain offence, to wit, criminal breach of trust by an agent has been committed by the Gemini Chit-Fund Corporation Limited, and that such offence was abetted by its directors, Abdul Gaffar and V.K.S. Narayanan, which offences are punishable with imprisonment for life or with imprisonment for a term which may extend to ten years and also with a fine, did cause certain evidence of the said offence to disappear, to wit, files containing the Gemini Chit-Fund Corporation Limited's correspondence, vouchers, bank statements, chit fund receipts and Abdul Gaffar's personal correspondence, with the intention of screening the said Gemini Chit-Fund Corporation Limited, Abdul Gaffar and V.K.S. Narayanan from legal punishment, and he had thereby committed an offence punishable under section 201 of the Penal Code".

The court, after hearing a plea of mitigation by the respondent's counsel who also tendered a statement written by the appellant in mitigation, sentenced the appellant to one day's imprisonment and a fine of $4,000 or in default 15 months' imprisonment. As a consequence of his conviction of a serious criminal offence and his admission of having committed another serious criminal offence he appeared before a Disciplinary Committee duly appointed under the provisions of the Legal Profession Act to hear and investigate the matter and to determine whether cause of sufficient gravity for disciplinary action exists under section 84 of the said Act. Under section 84(1) all advocates and solicitors are subject to the control of the Supreme Court and on due cause shown are liable to be struck off the roll or suspended from practice for any period not exceeding two years or censured. Under section 84(2)(a) such due cause may be shown by proof that an advocate and solicitor "has been convicted of a criminal offence, implying a defect of character which makes him unfit for his profession". Under section 84(2)(b) such due cause may be shown by proof that an advocate and solicitor "has been guilty of . . . grossly improper conduct in the discharge of his professional duty . . . ".

In his reply to the statement of case the respondent in effect admitted all the material allegations of fact alleged in the statement of case and admitted the fact of his conviction and that he had admitted to having committed another offence. At the hearing and investigation before the Disciplinary Committee, counsel on behalf of the Law Society relied on the con-